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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 247

WILLIAM T. REID,

Petitioner,

versus

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE FIFTH CIRCUIT COURT OF APPEALS

And

BRIEF IN SUPPORT THEREOF.

FRANK J. LOONEY,
Attorney for Petitioner.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No.

WILLIAM T. REID,

Petitioner,

versus

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE FIFTH CIRCUIT COURT OF APPEALS.

William T. Reid, defendant in the District Court of the United States for the Western District of Louisiana and appellant in United States Circuit Court of Appeals, Fifth Circuit, files this his petition and prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Fifth Circuit entered in the above case, R. 75-77, and made final by denial of rehearing on July 17, 1943, R. 83.

Opinion Below.

The opinion of the Circuit Court of Appeals is unpublished, but appears on pages 75 and 76 of the Record.

Jurisdiction.

The case involves questions of criminal law and evidence, in which the decision of the Circuit Court of Appeals is final, unless review is ordered by this, the Supreme Court.

It is contended, that jurisdiction to review is vested in this Court under Section 347 (2) of Title 28 of the United States Code. See *United States v. Gulf Refining Co.*, 268 U. S. 542.

Statute Involved.

The Statute involved is Title 18, Section 89, United States Code.

Statement.

The charge in the indictment is threatening to take the life of the President of the United States on or about March 15, 1941, R. 3.

Demurrer and motion to quash were filed, R. 3 and 4, and were overruled, R. 64.

On trial, objection was made to the introduction of evidence concerning other alleged offenses not considered germane but pertaining to conversations of defendant to the effect that Germany was going to win the war, R. 18,

and suggesting to a prisoner in jail that defendant herein would pay said prisoner's way to Germany, R. 15. This evidence was admitted over objection and exception taken, R. 15-18.

A verdict of guilty was returned by the jury, R. 68.

Motion for new trial was made and overruled and appeal taken, R. 71.

The case was heard in the Court of Appeals and judgment rendered June 17, 1943, R. 77.

Motion for rehearing was filed and denied July 17, 1943, R. 83.

Petition for stay of mandate was filed and allowed for 30 days pending this petition.

Questions Presented.

1. Is a statement of a defendant purporting to show subversive leaning toward the enemy used in a conversation with another person more than a year subsequent to the alleged offense and made after the United States had declared war admissible in evidence in a trial for making threats against the life of the President at a previous time, before the United States was at war?

2. Does the offense created by Title 18, Section 89, United States Code, include an oral conditional threat against the President, not charged to have been communicated to him?

Reasons for Granting Writ.

1. In holding under a charge of threatening to take the life of the President, that evidence was admissible of subversive remarks uttered more than a year after the date of the alleged offense, the decision in this case by the Fifth Circuit Court of Appeals is in direct conflict with the decisions of the Fourth Circuit Court of Appeals in case of *Hall v. United States*, 256 F. 748, and also in substantial conflict with *Boyd v. United States*, 142 U. S. 450, long recognized as controlling on this point.

2. The word "otherwise" used in Title 18, Section 89, under the rule *ejusdem generis* limits the offense to acts similar to those set forth in the first part of the Statute and contemplates a letter or other instrument in writing sent through interstate commerce, or other medium within Federal jurisdiction.

This is emphasized by the acts of Congress, U. S. Code title 18, section 338 (a) and Title 18, Section 408 (d) prohibiting mailing communications and transmitting such in interstate commerce, which offenses prescribed the identical punishment as does the Statute herein considered.

The construction thus placed on the statute is in conflict with the decisions of the Supreme Court of the United States beginning with *U. S. v. Bevans*, 3 Wheaton 338, and including *First National Bank v. Anderson*, 269 U. S. 341, the earlier case having been decided by Chief Justice Mar-

shall, who said, "by the words 'other place' was intended another place of a similar character with those previously enumerated".

Transcript of record below is attached hereto and made part hereof.

Wherefore, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Fifth Circuit, commanding that court to certify and send to this court for its review and determination, on a day certain to be therein named, the full and complete transcript of the record and all proceedings in the cause numbered and entitled on its docket No. 10,624, William T. Reid, appellant, v. United States of America, appellee, and that said judgment of the United States Circuit Court of Appeals for the Fifth Circuit may be reversed by this Court and that your petitioners be discharged without day and have such other and further relief in the premises as this Honorable Court may deem just and proper.

FRANK J. LOONEY,
Attorney for Petitioner.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

May It Please the Court:

Jurisdiction.

The matters herein involved are the construction of a criminal statute and a question of the admissibility of evidence as to offenses not germane to that charged. Jurisdiction is invoked under U. S. Code Title 28, Section 347 (2) and Supreme Court Rule, number 38, paragraph 5 (b).

Statement.

The facts are stated in the petition.

ARGUMENT.

The Evidence.

The law as to the admission in evidence of "similar offenses" is well stated by the Supreme Court of the United States in *Homer Bird v. United States*, 180 U. S. 356, where on page 360 the Court quoted the law as stated by the Massachusetts Supreme Court in *Commonwealth v. Horton*, 2 Gray, page 354, as follows:

> "It is the universal rule, in the trial of criminal cases, that nothing shall be given in evidence which does not directly tend to the proof or disproof of the matter in issue. The prosecuting officer is not, therefore, allowed to give evidence of fact tending to prove a similar but distinct offense, for the purpose of raising an inference or presumption that the

> accused committed the particular act with which he is charged. . . . The particular violence threatened was not against the deceased but against another member of the party."

Boyer v. United States, 132 F. 2d, 12 and 13:

> "But the fact that intent is in issue is not enough to let in evidence of similar acts, unless they are so connected with the offense charged in point of time and circumstances as to throw light upon the intent. . . . Nor is this a case of peculiar coincidence in which mere recurrence throws light on mental states. . . . But when the prior crime has no other relevance than that (similarity), it is inadmissible. Its tendency to create hostility, surprise and confusion of issues is thought to outweigh its probative value."

> In *U. S. v. Budd*, 144 U. S. 154, 164, the Court said "because a party has done wrong at one time and in one transaction, it does not necessarily follow that he has done like wrong at other times and in other transactions.
>
> Furthermore, the evidence admitted was not evidence adduced in a proceeding charging a criminal offense but testimony of such a character that it should not be considered as of even value enough on which to base a criminal charge."

In *Simpkins v. United States*, 78 Fed. (2d) 594, a case cited by the United States Supreme Court in *Glasser v. United States*, 315 U. S. 71, on page 597, the Court said:

> "It is a fundamental rule of criminal evidence frequently applied in both State and Federal Courts, that proof of offenses, other than those charged, is

generally inadmissible and constitutes prejudicial error, even though the separate offenses may be of a similar nature."

This rule should be applied strictly under conditions such as exist today or to quote from *Hall v. United States*, 256 Fed. 748, 752, "In a time like this, when patriotism is at a high pitch and many people have to a certain extent lost their mental poise, courts and jurors should be extremely cautious when required to pass upon the rights of an individual charged with an offense, affecting the welfare of the government."

The Statute.

For the Court's ready reference we quote U. S. Code, Title 18, section 89:

"Any person who knowingly and willfully deposits or causes to be deposited for conveyance in the mail for delivery from any post office or by any letter carrier any letter, paper, writing, print, missive, or document containing any threat to take the life of or to inflict bodily harm upon the President of the United States, or who knowingly and willfully otherwise makes any such threat against the President, shall upon conviction be fined not exceeding $1,000 or imprisoned not exceeding five years, or both. (Feb. 14, 1917, c. 64, 39 Stat. 919)."

The Court will note that this statute has two parts.

The first part contemplates an offense against the postal laws.

The second extends the meaning and purpose of the statute.

This makes the statute unique and without precedent, unless the rule *ejusdem generis* applies.

A comparison of these statutes with the later statutes, now Title 18, section 338 (a) and 409 (d), U. S. Code, shows the word "wilfully" written into Title 18, section 89, and shows it omitted in the later statutes.

Section 89 is unique in another way. It is the first statute ever enacted by Congress dealing with the person of the President and defining a crime against his person, except the "Alien and Sedition Laws" and the laws concerning persons in the Military Service of the United States. And while the Congress has, in U. S. Code, Title 3, section 53, enacted "The protection of the person of the President and the members of his immediate family and of the person chosen to be President of the United States is authorized," there is no penal clause in this statute.

This argument is not made with the purpose of contending that Congress has not the constitutional authority to make attacks or attempts to take the life of the President a crime, but to show that it is only by a strained construction that an act of Congress can be made to go beyond the context in a matter, where Congress has always refrained from direct legislation.

In *United States v. Wiltberger*, 5 Wheaton, 76, on page 96:

> "To determine that a case is within the intention of a statute, its language must authorize us to say so. It would be dangerous indeed to carry the principle that a case which is within the reason or mischief of a statute is within its provisons, so far as to punish a crime not enumerated in the statute, because of its equal atrocity, or of kindred character, with those which are enumerated."

It is respectfully submitted that the petition for certiorari should be allowed and the Supreme Court of the United States, should after hearing, reverse the judgment of Circuit Court of Appeals, Fifth Circuit, and order your defendant discharged.

FRANK J. LOONEY,
Attorney for Petitioner.

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In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 247

WILLIAM T. REID, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the circuit court of appeals (R. 74–75) is reported at 136 F. (2d) 476. The opinion of the district court denying petitioner's motion for a new trial (R. 48–60) is reported at 49 F. Supp. 313.

JURISDICTION

The judgment of the circuit court of appeals was entered June 17, 1943 (R. 75), and a petition for rehearing was denied July 17, 1943 (R. 81). The petition for a writ of certiorari was filed August 9, 1943. The jurisdiction of this Court is

invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. See also Rules XI and XIII of the Criminal Appeals Rules promulgated by this Court May 7, 1934.

QUESTIONS PRESENTED

1. Whether, at petitioner's trial for making threats against the life of the President, it was error to admit evidence of subversive statements made by petitioner approximately one year after the date of the alleged offense.

2. Whether an oral threat against the life of the President, not communicated to him, constitutes an offense under 18 U. S. C. 89.

STATUTE INVOLVED

18 U. S. C. 89 (Act of February 14, 1917, c. 64, 39 Stat. 919) provides:

> Any person who knowingly and willfully deposits or causes to be deposited for conveyance in the mail or for delivery from any post office or by any letter carrier any letter, paper, writing, print, missive, or document containing any threat to take the life of or to inflict bodily harm upon the President of the United States, or who knowingly and willfully otherwise makes any such threat against the President, shall upon conviction be fined not exceeding $1,000 or imprisoned not exceeding five years, or both.

STATEMENT

Petitioner was indicted on December 8, 1942, in the District Court for the Western District of Louisiana, in one count charging a violation of 18 U. S. C. 89, *supra,* p. 2. The indictment alleged that on or about May 15, 1941, petitioner made threats to take the life of the President and against the life of the President "in the verbal use of certain threatening language, in that the defendant declared, in the presence and hearing of and to Ben Head and Mrs. Ben Head * * * that he hated President Roosevelt and that, if he had the time and money, he would go to Washington and kill the President and that if the President should ever come South, he most certainly would kill him, which threat was made against the President as such, and on account of his official character and capacity * * *." (R. 2–3.)

At the trial the Government offered three witnesses who testified, over petitioner's objection, concerning conversations they had had with petitioner in the spring and early summer of 1942, about a year subsequent to the date of the alleged offense, in which petitioner expressed sympathy for and desire to aid "the Germans," and stated that they were going to win the war (R. 15–16, 18), and that an army was needed "to guard [the President] because somebody was going to bump him off" (R. 18–19).[1]

[1] The Government's other evidence was not incorporated in the record on appeal.

In his charge the trial judge instructed the jury that the "crucial point" was whether petitioner had made the threat charged in the indictment; that if they concluded that he had, they might then consider evidence of the other statements made by petitioner, not as proving the commission of any other offense, but as bearing only on his intent or motive in making the threat charged (R. 25–26).

Petitioner was convicted (R. 3, 68) and sentenced to 18 months' imprisonment (R. 70–71). On appeal to the Circuit Court of Appeals for the Fifth Circuit, the conviction was affirmed (R. 74–75).

ARGUMENT

1. Petitioner contends (Pet. 4, 7–9) that the testimony concerning the statements made by him approximately one year after the commission of the alleged offense was erroneously admitted, because it constituted evidence of other offenses distinct from that charged in the indictment, and also because the statements were too remote in point of time to be probative on the issue of his intent in making the threat charged in the indictment.

This contention is without merit. The evidence was clearly admissible as bearing upon petitioner's intent, motive, and state of mind,[2] even

[2] See *Debs* v. *United States*, 249 U. S. 211, 214–215; *Williamson* v. *United States*, 207 U. S. 425, 451; *Allis* v. *United States*, 155 U. S. 117, 119; *Wood* v. *United States*, 16 Pet. 342.

if it disclosed the commission of other offenses. The rule that evidence of this character which throws light upon the intent of the accused is admissible, was peculiarly applicable here, for petitioner's defense was, in part, that the statement alleged in the indictment as constituting a threat against the life of the President, was not intended as a threat, but was uttered in a jocular vein or in the course of a political argument (R. 16–17). Petitioner's intent, therefore, was squarely placed in issue, and it was for this reason that the trial judge admitted the challenged evidence (*ibid.*). The limited purpose for which this evidence was admitted was, moreover, carefully explained to the jury; the judge instructed that it was to be considered only in connection with petitioner's intent in making the alleged threat (R. 25–26).

It is apparent that the evidence in question was material on the issue of petitioner's intent. His

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360–361; *Viereck* v. *United States*, 130 F. (2d) 945, 959–960 (App. D. C.), reversed on other grounds, 318 U. S. 236; *United States* v. *Pelley*, 132 F. (2d) 170, 180–181 (C. C. A. 7), certiorari denied, 318 U. S. 764, rehearing denied, 318 U. S. 801; *Schoborg* v. *United States*, 264 Fed. 1, 7 (C. C. A. 6), certiorari denied, 253 U. S. 494; *Howenstine* v. *United States*, 263 Fed. 1, 5–6 (C. C. A. 9); *Stenzel* v. *United States*, 261 Fed. 161, 162 (C. C. A. 8); *Shidler* v. *United States*, 257 Fed. 620, 623 (C. C. A. 9); *Herman* v. *United States*, 257 Fed. 601, 603–604 (C. C. A. 9), certiorari denied, 251 U. S. 558; *Coldwell* v. *United States*, 256 Fed. 805, 811–812 (C. C. A. 1), certiorari denied, 250 U. S. 661; *Kirchner* v. *United States*, 255 Fed. 301, 304–305 (C. C. A. 4), certiorari dismissed, 250 U. S. 678.

statements expressing sympathy with "the Germans" and a desire to aid their cause, and that an army was needed to guard the President because "somebody" was going to kill him, indicated a state of mind which would induce him maliciously to threaten the life of the President, and they were sufficiently connected in nature and circumstances to be probative on the issue of his intent at the time he made the threat.[3] Furthermore, the trial court has discretion in the admission of evidence which discloses intent (*Glasser* v. *United States,* 315 U. S. 60, 81–82; *Partridge* v. *United States,* 39 App. D. C. 571, 577), and a wide latitude is permitted where, as here, it is an important element of the offense charged.[4]

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[3] See, e. g., *United States* v. *Pelley*, 132 F. (2d) 170, 180–181 (C. C. A. 7), certiorari denied, 318 U. S. 764, rehearing denied, 318 U. S. 801; *Viereck* v. *United States*, 130 F. (2d) 945, 959–960 (App. D. C.), reversed on other grounds, 318 U. S. 236; *Grant* v. *United States*, 268 Fed. 443, 448 (C. C. A. 6), certiorari denied, 256 U. S. 700; *Howenstine* v. *United States*, 263 Fed. 1, 6 (C. C. A. 9). Since the evidence had probative value it is immaterial that the statements were made after, rather than before, the offense charged. *Allis* v. *United States*, 155 U. S. 117, 118; *Shreve* v. *United States*, 103 F. (2d) 796, 803 (C. C. A. 9), certiorari denied, 308 U. S. 570; *Holt* v. *United States*, 42 F. (2d) 103, 106 (C. C. A. 6).

[4] Petitioner's suggestion (Pet. 9) that the challenged evidence was inflammatory, is insubstantial. At the conclusion of his charge the trial judge admonished the jury that they were not to be swayed by the circumstance that our country is at war, and that they were required to give the case calm, honest, and dispassionate consideration (R. 26–27).

2. Petitioner also contends (Pet. 4, 9–11) that the statute does not embrace oral threats against the President, not communicated to him. He argues that, under the rule of *ejusdem generis,* the offense defined by the second part of the statute (p. 2, *supra*) is limited to acts similar to those set forth in the first part, i. e., to the sending of a letter or other instrument in writing "through interstate commerce, or other medium within Federal jurisdiction."

A mere reading of the statute demonstrates the fallacy of this contention. The term "otherwise" as used in the second part of the statute was obviously intended to cover the making of oral threats. The courts have so construed the statute. *United States* v. *Stobo,* 251 Fed. 689, 691 (D. Del.); *United States* v. *Metzdorf,* 252 Fed. 933, 937 (D. Mont.); see also *Clark* v. *United States,* 250 Fed. 449 (C. C. A. 5); *Ragansky* v. *United States,* 253 Fed. 643 (C. C. A. 7). In addition, the courts have repeatedly held that the threat need not be communicated to the President to come within the interdiction of the statute. *United States* v. *Stickrath,* 242 Fed. 151, 155–156 (S. D. Ohio); *United States* v. *Jasick,* 252 Fed. 931, 933 (E. D. Mich.); *United States* v. *Stobo, supra,* at 691–692. This construction of the statute as covering oral threats not communicated to the President, is supported as well by the expla-

nation of its scope given on the floor of the House by the sponsor of the bill.[5]

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[5] Congressman Webb, who was in charge of the bill, stated (53 Cong. Rec. 9377–9378):

"This bill was drawn by the Department of Justice, and the committee went over it carefully and amended it, and struck out the punishment for threats, *either orally* or by mail, against the successors to the President, and made it apply to the President alone. I can say to my friend that for 25 years threatening letters have come in the White House mail, and something ought to be done in the way of protecting the Chief Executive of this great Republic, if possible, from this kind of annoyance. [Italics supplied.]

* * * * *

"A bad man can make a public threat, and put somebody else up to committing a crime against the Chief Executive, and that is where the harm comes. The man who makes the threat is not himself very dangerous, but he is liable to put devilment in the mind of some poor fellow who does try to harm him. * * *

"* * * The highest duty of a Government is to protect itself, and certainly the head of the Government should be protected both against assault and against any threat to do him physical harm * * *.

"* * * That is one reason why we want this statute—in order to decrease the possibility of actual assault by punishing threats to commit an assault * * *.

"* * * everybody admits that the Chief Executive of a great Nation like ours ought to be protected in every way possible, especially in view of the sad experience we have had in losing by assassination three of our beloved Presidents. * * *

"* * * an ounce of prevention is worth a pound of cure, and we want to prevent the threats which often incite men to kill and murder."

CONCLUSION

The decision below is correct, and there is involved no conflict of decisions or question of general importance. We respectfully submit, therefore, that the petition for a writ of certiorari should be denied.

CHARLES FAHY,
Solicitor General.
TOM C. CLARK,
Assistant Attorney General.
ROBERT S. ERDAHL,
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JAMES W. KNAPP,
Attorney.

SEPTEMBER 1943.

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PETITION FOR REHEARING IN RE WILLIAM T. REID APPLYING FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT.

FRANK J. LOONEY,
Attorney for Petitioner.

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SUPREME COURT OF THE UNITED STATES

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NO. 247

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PETITION FOR REHEARING IN RE WILLIAM T. REID APPLYING FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT.

In this cause comes William T. Reid, petitioner here and defendant below and petitions this Honorable Court, to grant a rehearing on the petition for a Writ of Certiorari, filed in above numbered and entitled case, which said pe-

tition was denied on October 25, 1943, and shows the following reasons:

1.

The brief of the United States opposing the petition was incorrect in contending that the first question therein presented, was based on the time in which purported subversive remarks were made, whereas the reason given was based on the conflicting decision in Hall vs. United States 256 Fed. 748, 749, 750, wherein the court held that in a trial under "The Espionage Act,"

> "any evidence tending to show that the defendant had made threats against the President unconnected with the offences of which he was convicted became wholly immaterial to the issues then being tried. The introduction of this evidence would of necessity tend to create a false impression upon the minds of the jury, etc."

The section of the Espionage Act referred to is T. 50, section 33, U. S. Code.

In the appendix we print section 89, T. 18, U. S. Code, under which this defendant was indicted and respectfully suggest that the alleged threat against the President was made when the United States *was not at war* whereas T. 50, section 33, U. S. Code is only applicable, "when the United States *is at war.*" (Italics ours). Petitioner further shows that the Transcript of record discloses that the jury twice returned into Court to ask new instructions as to defendant's intent, T. 28, and 29. That the first time the Court said "It is not necessary that he have the intent to carry it out" and again, "It does not have to be made with the avowed purpose of carrying it out." The erroneous statement of the Court only tended to confirm the impression

created, "of necessity," upon the jurors' mind, by the inadmissible evidence.

2.

Petitioner shows that the brief of defendant filed in this Court, contained excerpts from the Congressional Record which the governments counsel introduced before the Supreme Court, although debates in Congress are not admissible in evidence to show the meaning of statutes.

Petitioner further shows that the fairness due to a defendant by a prosecutor would at least call for a complete transcript of the debate which in its entirety would not bear out the government's claim of the intent of Congress.

This debate appeared on pages 9377-9379 of the Congressional Record, 64th Congress, 1st. Session, Part 9.

Petitioner shows that the chairman of the committee did not say that "oral" threats were included in the statute, but, proven by the italicized words, that "the punishment for threats, either orally or by mail" was struck out, as to "the successors to the President."

There is no statement, direct or by inference that any "oral threat" was contained in the bill itself which the committee made "apply to the President alone." Further shows that at this point in the debate the chairman referred to "threatening letters x x x in the White House mail." Government brief, page 8.

All else that is quoted in that brief is merely argumentative, and refers to the general duty to protect the President.

Petitioner shows that in as much as the act was passed to protect President Wilson, alone, and his "successors" were stricken from the bill some question of the obsoleteness of this act might be raised. Petitioner shows that Governments counsel further quoted "a bad man can make a public threat, and put somebody else up to committing a crime against the Chief Executive, and that is where the harm comes." Petitioner shows that there is nothing in the act about inciting men to harm the President, and by no stretch of language or imagination can the word "threat" be broadened to include conspiracy of "inciting to crime," and that an indictment of "inciting persons to kill the President," would not be responsive to T. 18, Section 89, U. S. Code. Petitioner further shows that in the Congressional debate aforesaid repeated references were made to "threatening letters," one member going so far as to state, "this bill provides for the punishment *only* of those who *deposit;* (Italic ours) "for conveyance in the mail or for delivery from any post office or by any letter carrier, any letters, papers, writing, print, missive, or document containing any threat to take the life of or to inflict, bodly harm upon the President of the United States.

The use of the words "only" and "deposit" imply that this Congressman, at least, understood the act to apply to conveyed written or printed threats, and the word "otherwise" was to be construed by the rule of "ejusdem generis."

Wherefore, this Honorable court is requested to review the petition for Certiorari, the records and debates in Congress, and to grant a rehearing herein, and on reconsideration to grant the Writ of Certiorari prayed for and in a

definite manner declare the scope of Section 89 of T. 18, U. S. Code.

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Frank J. Looney,
Attorney for Petitioner.

I certify that this motion is made in good faith and not merely for the purpose of delay, this the 29th day of October, 1943.

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Frank J. Looney,
Attorney for Petitioner.

APPENDIX

THE STATUTE

For the Court's ready reference we quote U. S. Code, Title 18, Section 89:

> "Any person who knowingly and willfully deposits or causes to be deposited for conveyance in the mail for delivery from any post office or by any letter carrier any letter, paper, writing, print, missive, or document containing any threat to take the life of or to inflict bodily harm upon the President of the United States, or who knowingly and willfully otherwise makes any such threat against the President, shall upon conviction be fined not exceeding $1,000 or imprisoned not exceeding five years, or both. (Feb. 14, 1917, C. 64, 39 Stat. 919)."